



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 590

[FE Docket No. 17-86-R]

RIN 1901-AB43

Small-Scale Natural Gas Exports

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE or Department) proposes to revise its regulations to provide that DOE will issue an export authorization upon receipt of any complete application that seeks to export natural gas, including liquefied natural gas (LNG), to countries with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA countries), provided that the application satisfies the following two criteria: the application proposes to export natural gas in a volume up to and including 0.14 billion cubic feet (Bcf) per day (Bcf/d), and DOE's approval of the application does not require an environmental impact statement (EIS) or an environmental assessment (EA) under the National Environmental Policy Act of 1969 (NEPA). In proposing this revision, DOE is interpreting the phrase "public interest" set forth in the Natural Gas Act (NGA). DOE proposes that applications that satisfy these criteria are requesting authorization for "small-scale natural gas exports" and, as such, the exports are deemed to be consistent with the public interest under the NGA. DOE's regulations regarding notice of applications and procedures conducted on applications would no longer apply to applications that satisfy these criteria. The proposed regulation is intended to expedite DOE's

processing of these applications, thereby reducing administrative burdens for the small-scale natural gas export market.

DATES: Public comment on this proposed rule will be accepted until **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments identified by Regulation Identifier Number (RIN) 1901-AB43 and FE Docket No. 17-86-R. Use any of the following methods, although the eRulemaking Portal is preferred:

1. *Federal eRulemaking Portal* (the preferred method): Follow the instructions for submitting comments on the Federal eRulemaking Portal at <http://www.regulations.gov>.

2. *Email*: Send e-mail to fergas@hq.doe.gov. Include RIN 1901-AB43 and FE Docket No. 17-86-R in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.

3. *Regular Mail*:

U.S. Department of Energy (FE-34), Office of Regulation and International Engagement,
Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026-4375.

4. *Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)*

U.S. Department of Energy (FE-34), Office of Regulation and International Engagement,
Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue, SW.,
Washington, DC 20585. Telephone: 202-586-9478.

Due to potential delays in the delivery of postal mail, we encourage respondents to submit comments electronically to ensure timely receipt. **PLEASE NOTE:** If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password

protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

Docket: This notice of proposed rulemaking and any comments that DOE receives will be made available on the Federal eRulemaking Portal at <http://www.regulations.gov>, and also on DOE's website at: <https://www.energy.gov/fe/services/natural-gas-regulation>.

FOR FURTHER INFORMATION CONTACT: Amy Sweeney, U.S. Department of Energy (FE-34), Office of Regulation and International Engagement, Office of Fossil Energy Forrestal Building, Room 3E-042, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-2627; or

Cassandra Bernstein or Ronald (R.J.) Colwell, U.S. Department of Energy (GC-76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D-033, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586-9793 or (202) 586-8499.

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IV. Approval of the Office of the Secretary

I. Background

A. Statutory Background

The Department of Energy is responsible for authorizing exports of natural gas to foreign nations pursuant to section 3 of the NGA, 15 U.S.C. 717b. For applications to export natural gas to non-FTA countries under NGA section 3(a), 15 U.S.C. 717b(a),¹ DOE has consistently interpreted section 3 of the NGA as creating a rebuttable presumption that a proposed export of natural gas is in the public interest. Accordingly, DOE conducts an informal adjudication and grants the application unless DOE finds that the proposed exportation will not be consistent with the public interest.² Before reaching a final decision on any non-FTA application, DOE must also comply with NEPA, 42 U.S.C. 4321 *et seq.*

¹ This notice of proposed rulemaking does not apply to exports to FTA countries under section 3(c) of the NGA, 15 U.S.C. 717b(c).

² 15 U.S.C. 717b(a); *see, e.g., Golden Pass Products LLC*, DOE/FE Order No. 3978, FE Docket No. 12-156-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Golden Pass LNG Terminal Located in Jefferson County, Texas, to Non-Free Trade Agreement Nations, at 18, 162 (Apr. 25, 2017).

Typically, the federal agency responsible for permitting the export facility serves as the lead agency in the NEPA review process, and DOE serves as a cooperating agency within the meaning of the Council on Environmental Quality's (CEQ) regulations, 40 CFR 1501.4, 1501.5. For LNG terminals located onshore or in state waters, the agency responsible for permitting the export facilities is the Federal Energy Regulatory Commission (FERC) pursuant to authority delegated by DOE under section 3(e) of the Natural Gas Act, 15 U.S.C. 717b(e). For LNG terminals located offshore beyond state waters, the responsible agency is the Maritime Administration (MARAD) within the Department of Transportation pursuant to section 3(9) of the Deepwater Ports Act, as amended by section 312 of the Coast Guard and Maritime Transportation Act of 2012 (Pub. L. 112–213).

DOE's environmental review process under NEPA usually results in the preparation or adoption of an EIS or EA describing the potential environmental impacts associated with the application. In some cases, DOE may determine that an application is eligible for a categorical exclusion from the preparation or adoption of an EIS or EA pursuant to DOE's regulations implementing NEPA, 10 CFR 1021.410, appendices A & B. For example, categorical exclusion B5.7 of DOE's regulations (10 CFR part 1021, subpart D, appendix B5.7) applies to natural gas import or export activities requiring minor operational changes to existing projects, but no new construction.

B. DOE's Public Interest Analysis Under Section 3(a) of the Natural Gas Act

Although NGA section 3(a) establishes a broad public interest standard and a presumption favoring export authorizations, the statute does not define "public interest" or identify criteria that must be considered in evaluating the public interest. In prior decisions, DOE has identified a range of factors that it evaluates when reviewing an application for export

authorization. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others. To conduct this review, DOE looks to record evidence developed in the application proceeding.³

DOE's prior decisions have also looked to certain principles established in its 1984 Policy Guidelines.⁴ The goals of the Policy Guidelines are to minimize federal control and involvement in energy markets and to promote a balanced and mixed energy resource system. The Guidelines provide that:

The market, not government, should determine the price and other contract terms of imported [or exported] natural gas The federal government's primary responsibility in authorizing imports [or exports] will be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.⁵

While the Policy Guidelines are nominally applicable to natural gas import cases, DOE subsequently held in Order No. 1473 that the same Policy Guidelines should be applied to natural gas export applications.⁶

In Order No. 1473, DOE stated that it was further guided by DOE Delegation Order No. 0204-111. That delegation order, which authorized the Administrator of the Economic Regulatory Administration to exercise the agency's review authority under NGA section 3, directed the Administrator to regulate exports "based on a consideration of the domestic need for the gas to be exported and such other matters as the Administrator finds in the circumstances of a

³ See, e.g., *Golden Pass Products*, DOE/FE Order No. 3978, at 135-66.

⁴ New Policy Guidelines and Delegations Order Relating to Regulation of Imported Natural Gas, 49 Fed. Reg. 6684 (Feb. 22, 1984) [hereinafter 1984 Policy Guidelines].

⁵ *Id.* at 6685.

⁶ *Phillips Alaska Natural Gas*, DOE/FE Order No. 1473, at 14 (citing *Yukon Pacific Corp.*, DOE/FE Order No. 350, Order Granting Authorization to Export Liquefied Natural Gas from Alaska, 1 FE ¶ 70,259, at 71,128 (1989)).

particular case to be appropriate.”⁷ (In February 1989, the Assistant Secretary for Fossil Energy assumed the delegated responsibilities of the Administrator of ERA.⁸)

Although DOE Delegation Order No. 0204-111 is no longer in effect, DOE’s review of export applications has continued to focus on: (i) the domestic need for the natural gas proposed to be exported, (ii) whether the proposed exports pose a threat to the security of domestic natural gas supplies, (iii) whether the arrangement is consistent with DOE’s policy of promoting market competition, and (iv) any other factors bearing on the public interest, as determined by DOE.

Additionally, since 2011, DOE has commissioned several studies to evaluate the reasonably foreseeable economic and environmental impacts of natural gas exports, and to respond to concerns about exports submitted to DOE in various proceedings. These studies include: *Effect of Increased Natural Gas Exports on Domestic Energy Markets* (2012 EIA⁹ Study) and *Macroeconomic Impacts of LNG Exports from the United States* (NERA Study) (collectively, 2012 LNG Export Study);¹⁰ *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (2014 EIA LNG Export Study);¹¹ *The Macroeconomic Impact of Increasing U.S. LNG Exports* (2015 LNG Export Study);¹² the *Addendum to Environmental Review*

⁷ DOE Delegation Order No. 0204-111, at 1; *see also* 1984 Policy Guidelines, 49 Fed. Reg. at 6690.

⁸ *See* Applications for Authorization to Construct, Operate, or Modify Facilities Used for the Export or Import of Natural Gas, 62 Fed. Reg. 30,435, 30,437 n.15 (June 4, 1997) (citing DOE Delegation Order No. 0204-127, 54 Fed. Reg. 11,436 (Mar. 20, 1989)).

⁹ “EIA” refers to the U.S. Energy Information Administration.

¹⁰ *See* 2012 LNG Export Study, 77 Fed. Reg. 73,627 (Dec. 11, 2012), *available at*: http://energy.gov/sites/prod/files/2013/04/f0/fr_notice_two_part_study.pdf.

¹¹ U.S. Energy Info. Admin., *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets* (Oct. 2014), *available at*: <https://www.eia.gov/analysis/requests/fe/pdf/lng.pdf>.

¹² Center for Energy Studies at Rice University Baker Institute and Oxford Economics, *The Macroeconomic Impact of Increasing U.S. LNG Exports* (Oct. 29, 2015), *available at*: http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.

Documents Concerning Exports of Natural Gas from the United States (Addendum);¹³ and the *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* (LCA GHG Report).¹⁴ DOE published these studies in the *Federal Register* and has responded to the public comments received on each study.¹⁵

The 2012 EIA Study generally found that natural gas exports will lead to higher domestic natural gas prices, increased domestic natural gas production, reduced domestic natural gas consumption, and increased natural gas imports from Canada via pipeline. Among the key findings of the NERA Study (the second part of the 2012 LNG Export Study), NERA projected that the United States would gain net economic benefits from allowing LNG exports. For every market scenario examined, the NERA Study determined that economic benefits increased as the level of natural gas exports increased.

The 2014 EIA LNG Export Study found that natural gas exports will generally lead to relatively modest domestic natural gas price increases, increased domestic natural gas production, reduced domestic natural gas consumption, and higher levels of economic output (as measured by real gross domestic product).

The 2015 LNG Export Study considered export volumes ranging from 12 to 20 Bcf/d of natural gas, as well as a high resource recovery case examining export volumes up to 28 Bcf/d of

¹³ Dep't of Energy, Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 Fed. Reg. 48,132 (Aug. 15, 2014), *available at*: <http://energy.gov/fe/addendum-environmental-review-documents-concerning-exports-natural-gas-united-states>.

¹⁴ Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States, 79 Fed. Reg. 32,260 (June 4, 2014). DOE/FE announced the availability of the LCA GHG Report on its website on May 29, 2014.

¹⁵ *See, e.g. Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC*, DOE/FE Order No. 3638, FE Docket No. 12-97-LNG, Final Order and Opinion Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Corpus Christi Liquefaction Project to Be Located in Corpus Christi, Texas, to Non-Free Trade Agreement Nations, at 94-148, 167-83 (May 12, 2015); *Golden Pass Products*, DOE/FE Order No. 3978, at 71-92.

natural gas. The analysis covered the 2015 to 2040 time period. The 2015 Study made the following key findings:

- Rising natural gas exports are associated with a net increase in domestic natural gas production;
- As exports increase, the spread between U.S. domestic prices and international benchmarks narrows;
- The overall macroeconomic impacts of higher natural gas exports are marginally positive—a result that is robust to alternative assumptions for the U.S. natural gas market;
- An increase in U.S. natural gas exports will generate small declines in output at the margin for some energy-intensive, trade-exposed industries; and
- Negative impacts in energy-intensive sectors are offset by positive impacts elsewhere.

The Addendum evaluated environmental impacts including water resources, air quality, greenhouse gas emissions, induced seismicity, and land use impacts. The DOE Addendum concluded that DOE cannot meaningfully estimate where, when, or by what particular method additional natural gas would be produced in response to non-FTA export demand.

Finally, although not directly relevant to this proposed rule,¹⁶ the LCA GHG Report reached conclusions regarding the use of U.S. natural gas exports to produce electricity in European and Asian markets, as well as the life cycle greenhouse gas emissions of exported U.S. natural gas as compared to other sources of natural gas in those markets.

¹⁶ DOE considers the LCA GHG Report in non-FTA export proceedings whenever an application seeks to transport LNG by LNG tanker from large-scale liquefaction facilities to non-FTA countries. By contrast, small-scale exports of natural gas (including LNG) typically are transported shorter distances using other transportation methods, such as ISO containers loaded onto container ships. DOE therefore does not consider the LCA GHG Report as part of the record in those proceedings. *See infra* (identifying seven non-FTA export authorizations for which the LCA GHG Report was not considered in the application proceeding, and discussing transportation of small-scale exports).

C. DOE's Non-FTA Export Authorizations Since 2012

To date, DOE has issued 28 final export authorizations to non-FTA countries, bringing the cumulative total of approved non-FTA exports of LNG and compressed natural gas (CNG) to 21.33 Bcf/d of natural gas, or 7.79 trillion cubic feet per year.¹⁷ These non-FTA authorizations are available online at the DOE/FE E-Docket Room.¹⁸

Of these 28 non-FTA authorizations, seven authorize exports in volumes below 0.14 Bcf/d of natural gas—the volume limitation set forth in the criteria for this proposed rulemaking. These seven authorizations include: Carib Energy (USA) LLC (0.04 Bcf/d), American Marketing LLC (0.008 Bcf/d), Emera CNG, LLC (0.008 Bcf/d), Floridian Natural Gas Storage Company, LLC (0.04 Bcf/d), Air Flow North American Corp. (0.002 Bcf/d), Flint Hills Resources, LP (0.01 Bcf/d), and Carib Energy (USA), LLC (0.004).¹⁹ Together, these authorizations approve exports of LNG and CNG in a combined volume of 0.112 Bcf/d—less than 0.6% of the cumulative volume of non-FTA exports approved by DOE to date.

In each of the 28 non-FTA export authorizations issued to date, and on the basis of the record evidence presented in those proceedings, DOE has reached the following conclusions as part of its public interest determination for each application:

- Substantial domestic natural gas supplies exist to meet domestic natural gas demand and increased natural gas exports;
- While increased natural gas exports will result in higher U.S. natural gas prices, these price changes remain in a relatively narrow range across the scenarios studied and the domestic natural gas market is capable of accommodating increased natural gas exports without significant negative price or other economic impacts;

¹⁷ See *Lake Charles LNG Export Co., LLC*, DOE/FE Order No. 4010, FE Docket No. 16-109-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal in Calcasieu Parish, Louisiana, to Non-Free Trade Agreement Nations, at 43-46 (June 29, 2017).

¹⁸ Dep't of Energy, Office of Fossil Energy, *Electronic Docket Room (E-Docket Room)*, <https://www.energy.gov/fe/downloads/electronic-docket-room-e-docket-room>.

¹⁹ See *Lake Charles LNG Export Co.*, DOE/FE Order No. 4010, at 43-46 (citing these authorizations).

- Even with these estimated price increases, increased natural gas exports are likely to generate net economic benefits for the United States;
- Increased natural gas exports stimulate local, regional, and national economies through direct and indirect job creation, increased economic activity, and tax revenues; and
- Increased natural gas exports increase diversity of supply in the global natural gas market, in turn benefiting international trade and relations as well as global energy security.

DOE also has observed that it is far from certain that all or even most of the proposed natural gas export projects will be realized because of the time, difficulty, and expense of commercializing, financing, and constructing such projects, as well as the uncertainties inherent in the global market demand for natural gas.²⁰

II. Discussion of Proposed Rule

A. Summary of and Reasons for Proposed Rule

The emerging small-scale export market involves exports of small volumes of natural gas from the United States to countries primarily in, but not limited to, the Caribbean, Central America, and South America. Many of these countries do not generate enough natural gas demand to support the economies of scale required to justify large volumes of LNG imports from large-scale LNG terminals via conventional LNG tankers. The small-scale natural gas export market has developed as a solution to the practical and economic constraints limiting natural gas exports to these countries.

DOE is proposing to revise its regulations to expedite the application and approval process for small-scale exports of natural gas. Specifically, the proposed rule provides that DOE, upon receipt of any complete application to export natural gas (including LNG) to non-FTA countries, will grant the application provided that it satisfies the following two criteria: (1) the application

²⁰ See, e.g., *Golden Pass Products*, DOE/FE Order No. 3978, at Section XII and 161.

proposes to export natural gas in a volume up to and including 0.14 Bcf/d; and (2) DOE's approval of the application does not require an EIS or EA under NEPA—that is, the application is eligible for a categorical exclusion under DOE's NEPA regulations.

For each small-scale application submitted to DOE, DOE will first determine if the application is complete under DOE's regulations. If the application is complete, DOE will post the application on DOE's website, consistent with DOE practice. Next, DOE will determine if the application meets the criteria for a small-scale natural gas export. If the application meets the criteria, DOE will issue a non-FTA authorization granting the application on an expedited basis, without providing notice of application and other procedures typically required for non-FTA export applications under DOE's regulations, 10 CFR 590.205 and 10 CFR part 590, subpart C (10 CFR 590.303-10 CFR 590.317). All small-scale natural gas export authorizations issued pursuant to these regulations will be posted on DOE's website, and will contain appropriate terms and conditions consistent with DOE's regulations and practice.

DOE notes that entities involved in this emerging market typically define “small-scale” natural gas exports as exports of 1.0 million metric tons per annum (mtpa) or lower.²¹ When converting from million metric tons to billion cubic feet, DOE uses a conversion factor of 51.75 Bcf per million metric tons of dry natural gas.²² Based on this conversion factor, 1 million

²¹ See, e.g., INT'L GAS UNION, IGU WORLD GAS LNG REPORT 59 (2016 ed.), *available at*: www.igu.org/download/file/fid/2123 (“IGU defines the large-scale LNG industry as every LNG business above 1 million MTPA of LNG production and/or consumption. Conversely, small-scale LNG is any business under 1 million MTPA.”); INT'L GAS UNION, SMALL SCALE LNG 11 (June 2015), *available at*: http://www.igu.org/sites/default/files/node-page-field_file/SmallScaleLNG.pdf (“For the purpose of this report, the [small-scale LNG] production installed capacity has been defined as below 1 million metric tons per annum (mtpa).”); CÉDRIC ANDRIEU, GAS TECH. INST., ET AL., SMALL SCALE LNG IMPORT TERMINAL: NOT AS SIMPLE AS A REDUCED ONE 2, 4 (Conference Paper, LNG 17 International Conference & Exhibition on Liquefied Natural Gas, 2013), *available at*: http://www.gastechnology.org/Training/Documents/LNG17-proceedings/Storage-6-Cedric_Andrieu.pdf (“Typically, the send-out rate of ... small LNG terminals is ranging from 0.2 to 1 mtpa.”).

²² See, e.g., *Southern LNG Company, L.L.C.*, DOE/FE Order No. 3956, FE Docket No. 12-100-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Elba

metric tons per annum equates to approximately 0.14 Bcf/d of natural gas. Consequently, as the first criterion for the proposed rule, DOE proposes to define small-scale natural gas exports as any export of natural gas up to and including a volume of 0.14 Bcf/d. DOE believes this volume limitation is consistent with industry practice, but invites comment on any other appropriate small-scale volume limitation.

As the second criterion for this proposed rule, DOE must determine that its approval of the application does not require an EIS or an EA under NEPA, because it qualifies for a categorical exclusion. For example, pursuant to DOE's categorical exclusion B5.7, a small-scale natural gas export that involves only existing facilities and/or minor operational changes is an action that does not involve new construction.

Any application that satisfies these two criteria would qualify as a "small-scale natural gas export" as that term is defined under this proposed rule, and would be deemed to be consistent with the public interest under NGA section 3(a). As noted above, DOE's regulations regarding notice of applications, 10 CFR 590.205, and procedures applicable to application proceedings, 10 CFR 590 subpart C (10 CFR 590.301 to 10 CFR 590.317), would not apply to applications that satisfy these criteria. Rather, this proposed rule, and the 45-day comment period for this proposed rule, would constitute the notice and opportunity for hearing on all prospective small-scale natural gas export applications.

This proposed rule is limited to qualifying small-scale exports of natural gas. If adopted, this proposed rule would not affect either existing DOE authorizations or DOE's evaluation of any non-FTA application that does not meet the criteria for small-scale natural gas exports. In

Island Terminal in Chatham County, Georgia, to Non-Free Trade Agreement Nations (Dec. 16, 2016), at Ordering Para. H.

expediting the application and approval process for these exports, DOE recognizes the unique characteristics and minimal adverse impacts of the small-scale natural gas market emerging primarily in the United States, the Caribbean, Central America, and South America. As discussed below, the proposed rule is in accordance with section 3 of the NGA, DOE's interpretation of the public interest standard set forth in NGA section 3(a), and DOE's long-standing policy of minimizing federal control and involvement in energy markets and promoting a balanced and mixed energy resource system.

B. Consistency with Section 3(a) of the Natural Gas Act

Under section 3(a) of the NGA, the Secretary of Energy is required to issue an order upon application unless, after opportunity for hearing, DOE finds that the proposed export “will not be consistent with the public interest.”²³ DOE has long interpreted section 3(a) as creating a rebuttable presumption that a proposed export of natural gas is in the public interest, such that DOE must grant an application under section 3(a) unless opponents of the application overcome that presumption by making an affirmative showing of inconsistency with the public interest.²⁴ The statute, however, does not define “public interest” or identify criteria that DOE must consider when determining whether a proposed export of natural gas is consistent with the public interest under section 3(a). The statute affords DOE broad discretion in determining whether proposed exports to non-FTA countries are “consistent with the public interest” (15 U.S.C. 717b(a)). In this proposed rule, DOE is interpreting NGA section 3(a) to determine that small-scale natural gas exports are consistent with the public interest after considering all relevant

²³ 15 USC 717b(a).

²⁴ See *id.*; see, e.g., *Golden Pass Products*, DOE/FE Order No. 3978, at 18, 162.

factors, including the domestic need for the small volumes of natural gas to be exported and the security of domestic natural gas supplies.

C. Consistency with the Public Interest

In determining that small-scale natural gas exports are consistent with the public interest, DOE has considered the economic studies and the Addendum discussed in Section I.B, as well as the public comments received on these studies. DOE has also considered the 28 final non-FTA export authorizations issued to date, including the seven non-FTA authorizations approving exports at volumes below 0.14 Bcf/d of natural gas (identified in section I.C), as well as the most recent authoritative projections for natural gas supply, demand, and prices set forth in the *Annual Energy Outlook 2017* (AEO 2017).²⁵ Based on this evidence, and for the reasons described in Section II.A, DOE has determined that small-scale natural gas exports are consistent with the public interest under NGA section 3(a).

In reaching this conclusion, DOE has considered the economic impacts of higher natural gas prices and potential increases in natural gas price volatility and, as noted earlier, has reviewed the economic impacts of natural gas exports. Recent advancements in natural gas exploration and production technology have changed the outlook for the U.S. natural gas market, such that the increase in domestic supplies of natural gas will outpace increases in domestic demand.

The 2015 Study considered export volumes ranging from 12 to 20 Bcf/d of natural gas, as well as a high resource recovery case examining export volumes up to 28 Bcf/d of natural gas. By comparison, to date DOE has issued final non-FTA authorizations in a cumulative volume of exports totaling 21.33 Bcf/d of natural gas—well below the 28 Bcf/d case considered in the 2015

²⁵ U.S. Energy Information Administration, *Annual Energy Outlook 2017* (Jan. 2017), available at: <http://www.eia.gov/outlooks/aeo>.

Study. As DOE has explained in recent orders,²⁶ the authors of the 2015 Study had to include several unlikely assumptions about the global natural gas market for U.S. LNG exports to exceed *12 Bcf/d*, much less to reach the high resource recovery case of 28 Bcf/d of exports. Based on this evidence and the small volumes at issue in this proposed rule, DOE believes that domestic supplies will be adequate both to meet domestic needs and to supply small-scale exports of natural gas.

DOE finds that small-scale natural gas exports meeting the criteria set forth in this proposed rulemaking will not interfere with the domestic need for natural gas. Likewise, small-scale exports will not have a detectable impact on domestic natural gas prices, and will not pose a risk to the security of domestic natural gas supplies. While small-scale natural gas exports are unlikely to generate negative economic or supply impacts in the United States, these exports are expected to have positive impacts. Specifically, small-scale natural gas exports are expected to generate positive economic benefits in the United States through direct and indirect job creation, increased economic activity, tax revenues, and improved U.S. balance of trade.

To countries that do not otherwise have access to natural gas, small-scale natural gas exports represent an important change in their ability to generate electricity. Small-scale exports also will enable electric generation facilities in the importing countries to switch from heavy fuel oil and diesel to natural gas, providing positive environmental benefits through the reduction of emissions at fuel oil and diesel burning electric generators. The availability of a reliable supply of natural gas to customers outside of the United States who are currently burning diesel or fuel

²⁶ See, e.g., *Delfin LNG LLC*, DOE/FE Order No. 4028, FE Docket No. 13-147-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from a Proposed Floating Liquefaction Project and Deepwater Port 30 Miles Offshore of Louisiana to Non-Free Trade Agreement Nations, at 62-63 (June 1, 2017).

oil for power generation may encourage conversion to natural gas-based power generation equipment. Companies in the United States would be well positioned to provide and support this type of power generation equipment, thus providing secondary economic benefits from the small-scale exports.

Additionally, small-scale natural gas exports will enable importing countries to diversify their fuel supplies, while contributing to greater overall transparency, efficiency, and liquidity of natural gas markets outside the United States. To the extent small-scale natural gas exports will diversify global natural gas supplies, and increase the volumes of natural gas available globally, small-scale natural exports will improve energy security for many U.S. allies and trading partners. As such, the proposed rule will advance the public interest by fostering international relations, trade, and security.

D. Consistency with Free Market Principles

DOE has consistently subscribed to the principles set forth in the 1984 Policy Guidelines that the market, not the government, is the most efficient means of allocating natural gas supplies. The United States has an abundant supply of affordable natural gas that studies have shown will significantly exceed domestic demand. Meanwhile, foreign demand for natural gas imports from the United States has increased as many countries, such as those in the Caribbean, Central America, and South America, seek to import cleaner sources of energy.

The conventional, large-scale natural gas import/export market is extremely capital-intensive. Companies must achieve sufficient economies of scale to justify their multi-billion dollar investments in large-scale LNG terminals and in large-volume LNG tanker fleets. However, many of the countries in the Caribbean, Central America, and South America simply do not generate enough demand to import the large volumes of natural gas supplied by the large-scale

natural gas import/export market. Given these diseconomies of scale, a gap has emerged in the regional natural gas import/export market. Small-scale natural gas exports represent a market-driven response to fill this gap. In contrast to large-scale natural gas exports, small-scale natural gas exports typically originate from existing facilities in the United States, are transported shorter distances, and rely on a variety of transportation modes (such as ISO containers loaded onto container ships and barges). DOE believes that facilitating small-scale natural gas exports will allow for greater diversity and competition in the natural gas market.

III. Regulatory Review

A. Executive Orders 12866 and 13563

This regulatory action has been determined to not be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011.) EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other

advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE concludes that this proposed rule is consistent with these principles. Specifically, this proposed rule provides that DOE will issue an export authorization upon receipt of any complete application that seeks to export natural gas, including LNG, to non-FTA countries, provided that the application satisfies the following two criteria: (1) the application proposes to export natural gas in a volume up to and including 0.14 Bcf/d, and (2) DOE's approval of the application does not require an EIS or EA under NEPA. DOE's regulations regarding notice of applications, 10 CFR 590.205, and procedures applicable to application proceedings, 10 CFR part 590, subpart C (10 CFR 590.303 to 10 CFR 590.317), would not apply to small-scale natural gas exports. The proposed regulation is intended to expedite DOE's processing of these applications, thereby reducing administrative burdens for the small-scale natural gas export market.

B. Executive Orders 13771, 13777, and 13783

On January 30, 2017, the President issued Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs." That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. This proposed rule is expected to be an EO 13771 deregulatory action.

Additionally, on February 24, 2017, the President issued Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, EO 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

- (i) Eliminate jobs, or inhibit job creation;
- (ii) Are outdated, unnecessary, or ineffective;
- (iii) Impose costs that exceed benefits;
- (iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Finally, on March 28, 2017, the President signed Executive Order 13783, entitled “Promoting Energy Independence and Economic Growth.” Among other things, EO 13783 requires the heads of agencies to review all existing regulations, orders, guidance documents, policies, and

any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review does not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth elsewhere in that order.

Executive Order 13783 defined burden for purposes of the review of existing regulations to mean to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.

DOE concludes that this proposed rule is consistent with the directives set forth in these executive orders. Specifically, this proposed rule would require DOE to issue an export authorization upon receipt of any complete application that seeks to export natural gas, including LNG, to non-FTA countries, provided that the application satisfies the following two criteria:

(1) the application proposes to export natural gas in a volume up to and including 0.14 Bcf/d, and
(2) DOE's approval of the application does not require an EIS or an EA under NEPA. DOE proposes that applications that satisfy these criteria are requesting authorization for "small-scale natural gas exports" and, as such, the exports are deemed to be consistent with the public interest under NGA section 3(a). DOE's regulations regarding notice of applications and procedures conducted on applications would no longer apply to applications that satisfy these criteria. The proposed regulation would expedite DOE's processing of these applications, thereby reducing administrative burdens for the small-scale natural gas export market.

C. National Environmental Policy Act

DOE has determined that promulgation of these regulations fall into a class of actions that does not individually or cumulatively have a significant impact on the human environment as set

forth under DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rulemaking is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act regulations at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an EIS nor an EA is required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in the preamble, this proposed rule would require DOE to issue an export authorization upon receipt of any complete application that seeks to export natural gas, including LNG, to non-FTA countries, provided that the application satisfies the following two criteria: (1) the application proposes to export natural gas in a volume up to and including 0.14 Bcf/d, and (2) DOE's approval of the application does not require an EIS or an EA under NEPA. DOE's regulations regarding notice of applications and procedures conducted on applications would no longer apply to applications

that satisfy these criteria.

To date, DOE has received—and granted—seven applications to export LNG in volumes below 0.14 Bcf/d of natural gas to non-FTA countries (identified in section I.C). Of these seven applicants, two qualify as small businesses under the Small Business Administration’s size standards under NAICS 221210, Natural Gas Distribution, of 1000 employees or less. Because it would streamline the application and approval process for small-scale natural gas exports, the proposed rule would not result in a significant economic impact on a substantial number of small entities. The proposed rule would, however, provide greater regulatory certainty for applicants by eliminating the individual application proceeding and public interest evaluation for qualifying applications. This, in turn, will both reduce the administrative burden associated with the application process and expedite authorization of qualifying applications, removing (at a minimum) the opportunity cost of receiving an application delayed by the current procedures.

Therefore, DOE certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE did not prepare an IRFA for this rulemaking. DOE’s certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

E. Paperwork Reduction Act

The proposed rule does not change any requirements subject to review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and the procedures implementing that Act, 5 CFR 1320.1 et seq. Current natural gas import and export authorization holders, including any approved under this proposed rule, would be subject to the information collection requirements approved by the Office of Management and Budget under OMB Control No. 1901-0294. Public reporting burden for the certification is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on tribal, state, and local governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon tribal, state, or local governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on tribal, state, and local governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements

specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to tribal, state, or local governments, or to the private sector, of \$100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of tribal, state, and local governments. 2 U.S.C. 1534.

This proposed rule would streamline procedures for small-scale natural gas exports. DOE has determined that the proposed rule would not result in the expenditure by tribal, state, and local governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

G. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking

discretion of the states and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt state law and would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

I. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. For the reasons discussed in section II.C, this regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy, and therefore is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this proposed rule.

List of Subjects in 10 CFR Part 590

Administrative practice and procedure, Exports, Natural gas, Reporting and recordkeeping requirements.

Issued in Washington, DC, on August 25, 2017.

Robert J. Smith
Acting Assistant Secretary
Office of Fossil Energy

For the reasons stated in the preamble, DOE proposes to amend part 590, chapter II of title 10, subchapter G, Code of Federal Regulations as set forth below:

PART 590—ADMINISTRATIVE PROCEDURES WITH RESPECT TO THE IMPORT AND EXPORT OF NATURAL GAS

1. The authority citation for part 590 continues to read as follows:

Authority: Secs. 301(b), 402(f), and 644, Pub. L. 95-91, 91 Stat. 578, 585, and 599 (42 U.S.C. 7151(b), 7172(f), and 7254), Sec. 3, Act of June 21, 1938, c. 556, 52 Stat. 822 (15 U.S.C. 717b); E.O. 12009 (42 FR 46267, September 15, 1977); DOE Delegation Order Nos. 0204-111 and 0204-127 (49 FR 6684, February 22, 1984; 54 FR 11437, March 20, 1989).

2. Section 590.102 is amended by:

- a. Redesignating paragraph (p) as paragraph (q), respectively;
- b. Adding new paragraph (p).

The revisions to read as follows:

§590.102 Definitions.

* * * * *

(p) *Small-scale natural gas export* means an export of natural gas to nations with which there is not in effect a free trade agreement with the United States requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy, provided that the application for such export authority satisfies the following two criteria:

(1) The application proposes to export natural gas in a volume up to and including 0.14 billion cubic feet per day, and

(2) DOE's approval of the application does not require an environmental impact statement or an environmental assessment under the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

* * * *

3. Section 590.208 is revised to read as follows:

§590.208 Small volume exports.

(a) *Small-scale natural gas exports.* Small-scale natural gas exports are deemed to be consistent with the public interest under section 3(a) of the Natural Gas Act, 15 U.S.C. 717b(a). DOE will issue an export authorization upon receipt of any complete application to conduct small-scale natural gas exports. DOE's regulations regarding notice of applications, 10 CFR 590.205, and procedures applicable to application proceedings, 10 CFR part 590, subpart C (10 CFR 590.303 to 10 CFR 590.317), are not applicable to small-scale natural gas exports.

(b) *Scientific, experimental, or other non-utility natural gas exports.* Any person may export up to 100,000 cubic feet of natural gas (14.73 pounds per square inch at 60 degrees Fahrenheit) or the liquefied or compressed equivalent thereof, in a single shipment for scientific, experimental, or other non-utility gas use without prior authorization of the Assistant Secretary.

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